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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

UNDESIGNATED AMOUNT OF
MARIJUANA,

Defendant;

SUDI PEBBLES TRIPPET,

Defendant and Appellant.

H023003

(Santa Clara County
Super. Ct. No. B9943694)

Defendant Sudi Pebbles Trippett was charged with possession for sale and transportation of marijuana but the matter was eventually dismissed. The trial court denied Trippet's motion for return of the marijuana that had been found in her possession at the time of her arrest. Trippet purports to appeal from that order.

A. FACTS¹

On January 13, 1999, a police officer searched Trippet's car and found more than 50 marijuana cigarettes and other loose marijuana that altogether weighed roughly three ounces. The officer also found seven marijuana pipes, other drug related paraphernalia, and a packet of Rolodex cards. A felony complaint was filed on March 3, 1999 charging

¹ We summarize the facts from the record of the preliminary hearing.

Trippet with possessing marijuana for sale (Heath & Saf. Code, § 11359) and transportation and distribution of marijuana (Health & Saf. Code, § 11360, subd. (a)). The trial court issued a holding order following the preliminary hearing on March 27, 2001. At a further hearing on May 3, 2001, the court dismissed the entire matter. The prosecutor had requested dismissal based upon insufficiency of the evidence. The prosecutor noted that Trippet had a medical recommendation for marijuana and that “[a]t this point the People don’t have any guidance from the statement [*sic*] regarding the quantity of marijuana which is allowed [by Health and Safety Code section 11362.5].”

Trippet orally moved for the return of her marijuana. Her counsel stated: “And I will — I’m also, as we addressed in chambers, making a request to the court, and my client has asked me to make it officially on the record, for return of the property that was seized including the marijuana. [¶] She does — I think everybody’s in agreement. She is a person who fits under Prop 215. She does have an oral and written recommendation for use of this from her doctor, Dr. Mikuriga. And I know the court — when we discussed this matter in chambers, the court and counsel were willing to make an order returning all the other confiscated property. I just believe this is similar to someone who had confiscated a person’s prescription medicine, that they would give it back. I would argue that this is medicine, not contraband.” The court denied the motion. Trippet filed a Notice of Appeal the same day, stating: “[T]he judge’s denial of [Trippet]’s motion and request for order returning her marijuana was error.”

B. DISCUSSION

In her opening brief, Trippet states that this is “an appeal of a postjudgment order” and argues that the order is appealable pursuant to *People v. Beck* (1994) 25 Cal.App.4th 1095 (*Beck*). According to Trippet, *Beck* held that an order denying a motion for the return of property may be challenged either by writ of mandate or by direct appeal. (AOB 1) Relying on this interpretation of *Beck*, Trippet has chosen to proceed by way of

appeal. The Attorney General argues that Trippet has misconstrued *Beck* and that the order is not appealable. The Attorney General urges us to dismiss.

In *Beck*, the defendant pleaded guilty to one count of cultivation of marijuana. He then asked the trial court to return the firearms that had been seized when he was arrested. The trial court denied the motion on the ostensible authority of Penal Code section 12028. (*Beck, supra*, 25 Cal.App.4th at pp. 1098-1099.) The defendant filed a notice of appeal and a petition for writ of mandate. The court of appeal held that the defendant's nonstatutory motion for return of his firearms was properly reviewable by writ of mandate, but that the ruling under Penal Code section 12028 was appealable. (*Beck, supra*, 25 Cal.App.4th at p. 1104.) According to *Beck*, the difference is that a motion for the return of property is separate from the criminal trial but the operation of Penal Code section 12028 is integrated with the trial and conviction. Penal Code section 12028 provides that "upon conviction of the defendant" the firearm used in the commission the crime is deemed a nuisance and may be destroyed. The issue (use of the firearm in the commission of the offense) is determined in the criminal trial itself and, therefore, the confiscation of the property is appealable as an order after judgment. (*Beck, supra*, 25 Cal.App.4th at p. 1104.) Penal Code section 12028 has no application to this matter.

The right of appeal is entirely statutory. Only those actions of the trial court that the Legislature has selected may be reviewed on appeal. (*People v. Valenti* (1957) 49 Cal.2d 199, 204.) Penal Code section 1237 provides that a defendant may appeal only from a final judgment of conviction (as defined) or from "any order made after judgment, affecting the substantial rights of the party." The plain language of Penal Code section 1237 indicates that it cannot apply here because there has been no judgment. Moreover, even if the matter had been concluded by judgment, appeal of an order denying a motion for the return of property is not authorized by Penal Code section 1237. (See *People v.*

Gershenhorn (1964) 225 Cal.App.2d 122; *People v. Tuttle* (1966) 242 Cal.App.2d 883;
People v. Espinosa (1975) 50 Cal.App.3d 347.)

C. DISPOSITION

The appeal is dismissed.

Premo, Acting P.J.

WE CONCUR:

Elia, J.

Rushing, J.